RECEIVED

MAY 2 6 1998

Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

96-262

In the Matter of Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines	)	CCB/CPD No. 98-34

COMMENTS OF ONCOR COMMUNICATIONS, INC.

Operator Communications, Inc. d/b/a Oncor Communications, Inc. (Oncor), by its attorneys, hereby submits its comments in response to the public notice issued by the Commission regarding the imposition of Primary Interexchange Carrier Charges (PICC) on carriers who are the presubscribed interexchange carriers (IXCs) at public payphones.[1]

Oncor is a provider of operator-assisted calling services from public pay telephones. It is a presubscribed 0+ carrier for many payphones throughout the United States. At those payphones where Oncor is the presubscribed IXC, Oncor carries interLATA calls which are initiated by the calling party dialing the digit 0 plus the called area code and telephone number. Oncor is not the presubscribed IXC for 1+ calls. When a caller places an interLATA call from a pay telephone where Oncor is the presubscribed 0+ IXC by dialing the digit 1 plus the called area code and telephone number, the call is routed to an IXC other than Oncor which completes the call and collects the revenue for that call.

Oncor, like other presubscribed IXCs serving payphones, has begun to be assessed PICC

---

[1]Public Notice - Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, DA 98-845, released May 4, 1998.

charges by local exchange carriers (LECs) for the phones where it is a presubscribed carrier. Because these charges have had a significant adverse impact on Oncor's business and because Oncor has been able to locate no provision of the Commission's rules or language in any Commission order which warrants imposition of PICC charges on payphones in the manner in which LECs have chosen to do so, Oncor deemed it necessary to articulate its concerns in a letter to the Chief of the Commission's Common Carrier Bureau.[2] In its April 22, 1998 letter, Oncor noted that, not only has it been receiving invoices from LECs assessing PICC charges on all public payphones for which the LECs' records identify Oncor as the presubscribed 0+ carrier, but in virtually all situations the LECs have taken the liberty to assess PICC charges at the rate of $2.75 per line -- a rate applicable only to multiline business lines, irrespective of any provision of the Commission's rules either requiring or permitting imposition of the multiline business line PICC rate on payphone presubscribed 0+ IXCs.

Nothing in the Commission's access charge rules[3] nor in the Commission's Access Charge Reform reports and orders promulgating the revised access rules[4] provide any authority either for a) assessing PICC charges on IXCs identified as the presubscribed carriers for 0+ traffic from public payphones, or b) assessing PICC charges for payphones at the rate for multiline business lines. In order to assist the Commission's analysis of the issues raised by the LECs' manner of implementing PICC charges on presubscribed lines associated with payphones, Oncor will articulate its concerns

---

[2]See Letter to Mr. A. Richard Metzger, Chief, Common Carrier Bureau, from Stephen H. Lorberbaum, General Counsel, Operator Communications, Inc., dated April 22, 1998.

[3]47 C.F.R. Part 69. PICC charge requirements are codified at Section 69.153 of the Commission's rules.

[4]Access Charge Reform (*First Report and Order*), 12 FCC Rcd 15982 (1997), *Order on Reconsideration*, 12 FCC Rcd 10119 (1997), *Second Order on Reconsideration and Memorandum Opinion and Order*, 12 FCC Rcd 16606 (1997). Throughout these comments, the *First Report and Order* will be referred to as the Access Charge Reform Order.

by addressing the questions raised in the Commission's May 4, 1998 public notice.

2. **Does the Commission's existing rule governing collection of the PICC, 47 C.F.R § 69.153, permit price cap LECs to impose PICC charges on public payphone lines and, if not, whether the rule should be amended to provide explicitly for assessment of PICCs on public payphone lines?**

Section 69.153 contains no reference to payphone lines and there is no provision which indicates how -- or whether -- payphone lines are to be assessed PICC charges. In contrast to primary and additional residential lines and single line business and multiline business lines, there is nothing in the rule which indicates what level of PICC charge -- if any -- should be applicable to payphone lines. Given the precise detail with which the rule establishes levels and formulas for calculation of PICC charges on each of the categories of access lines mentioned in the rule, payphone lines -- which do not appear to be either business or residential lines -- are conspicuous by their absence. This absence leads to the conclusion that the Commission did not contemplate that LECs should recover common line revenues through PICC charges assessed on payphone lines.

Exclusion of PICC charges from payphone lines is supported by the Commission's discussion of the PICC charge in its Access Charge Reform Order. In this regard, the Commission's attention is directed to paragraph 93 of that order. There, the Commission addressed an argument which had been advanced by opponents of PICC charges, *i.e.*, that such flat rated charges on presubscribed IXCs would create incentives for customers to presubscribe to one IXC and use the services of another IXC by "dialing around" the presubscribed IXC. In rejecting that argument, the Commission stated as follows:

> A combination of lower per-minute long distance rates and attractive long-distance pricing packages that reward customers for increasing their usage of the presubscribed carrier's services should also help deter customers from using separate long-distance carriers for various services solely because of regulation. There is customer contact value

in being a customer's presubscribed interexchange carrier.[5]

The Commission's suggestion in support of PICC charges that IXCs should be able to discourage dial-around calling by use of attractive pricing packages which reward customers' increased usage of the presubscribed carriers' services clearly is inapposite for the pay telephone segment of the interexchange market. Callers at pay telephones are transient persons who are placing calls from telephones where they have not chosen the presubscribed IXC. Any correlation between a caller's chosen carrier and the IXC serving the payphone on a presubscribed basis would be coincidental. Indeed, successful marketing of caller loyalty programs through such means as usage-based discount packages and frequent flyer-type promotions should further encourage callers to dial-around the presubscribed IXC chosen by the payphone location provider (premise owner) and use the services of the caller's chosen carrier, thereby reducing the frequency with which the presubscribed IXC will derive benefit from being the presubscribed IXC at a payphone. It is doubtful whether the Commission intended to saddle payphone presubscribed IXCs -- and ultimately those callers who do not dial around -- with the additional costs of the PICC charges in those circumstances.

There are also sound public policy reasons why LECs should not be permitted to assess PICC charges on payphone lines. Imposition of such charges could produce anticompetitive consequences and would result in an economic windfall to those LECs. As a result of enactment of section 276 of the Communications Act -- added to the Act by the Telecommunications Act of 1996 -- and the promulgation of rules by the Commission to implement that section,[6] the largest LECs, *i.e.*, the Bell

---

[5]Access Charge Reform Order, *supra* 12 FCC Rcd at 16020.

[6]Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *et al* (*Report and Order*) 11 FCC Rcd 20541 (1996), *Order on Reconsideration*, 11 FCC Rcd 21233 (1996).

Operating Companies (BOCs), are now permitted to negotiate directly with location providers regarding the selection of presubscribed interexchange carriers from payphones.[7] Given this new authority, and the manner in which certain BOCs are utilizing that authority, it is now possible for LECs to determine who will be the presubscribed IXCs from the vast majority of payphones, and thereby determine which IXCs will be required to pay PICC charges to those LECs. Moreover, as the owners of a substantial number of payphones, those LECs will be receiving dial-around compensation for use of their payphones to place interLATA calls on other than a 0+ basis. Thus, those companies will be enjoying dial around compensation, usage-based access revenues, and, if permitted by the Commission, PICC revenues, all derived from their ownership of payphones.

3. **Assuming that price cap LECs are permitted to assess PICC charges on public payphone lines, should the PICC be: (a) charged to the presubscribed 1+ carrier; (b) charged to the presubscribed 0+ carrier; (c) imputed to the LEC's payphone unit as an end user; (d) split evenly between the 1+ and 0+ PIC; or (e) prorated among all IXCs that carry calls originating from a particular payphone each month? Commenters may also propose other alternative methods for allocating the public payphone PICC.**

As indicated above, nothing in the Commission's rules supports a requirement that PICC charges be assessed on payphone lines. Moreover, the premise upon which PICC charges seem to be based -- that the IXC which benefits from being the presubscribed IXC for an access line should be subject to a PICC charge -- may be appropriate for residential and business lines, but is facially inappropriate when applied to payphone lines. To the extent that the Commission's Access Charge Reform Order sheds any light on who should be assessed PICC charges for payphone lines -- if they are to be charged at all on payphone lines, the order strongly suggests that the presubscribed 1+ carrier is the carrier to be charged. Again, the Commission is directed to paragraph 93 of the Access

[7]LECs other than the BOCs already were permitted to do so.

Charge Reform Order, which states as follows:

> Regulators have long concluded that the convenience of making a long-distance call by simply dialing "1+" conveys certain advantages. And the advantages of "1+" dialing will only increase if, as many predict, we move to a world in which 'one stop shopping' for a multiplicity of services becomes the primary paradigm for provision of telecommunications services.[8]

Paragraph 93 spells out clearly and unequivocally that the Commission was contemplating 1+ dialing -- and only 1+ dialing -- when it promulgated the PICC charge. Had the Commission intended to include 0+ presubscription from payphones within the ambit of PICC charges, it easily could have done so. It did not. Given the Commission's long involvement in and familiarity with payphone presubscription,[9] it certainly was aware of 0+ calling from payphones and the differences between 1+ calling and 0+ calling. Yet, the Commission's explanation of the benefits of presubscription and why those benefits support imposition of PICC charges is, by its very language, limited to 1+ presubscription. Thus, a careful reading of the Commission's discussion of the PICC charge indicates that the charge was intended to be applicable to 1+ calling. In those circumstances where the presubscribed 1+ carrier differs from the presubscribed 0+ carrier, the presubscribed 1+ carrier is the entity intended by the Commission to be subject to PICC charges.

4. Should all public payphones be charged the multiline business PICC, or should some public payphones, such as those that constitute the only telephone line at a given location, be charged the single-line business PICC?

At the outset, it should be noted that nothing in the rules or the Access Charge Reform Order defines multiline business lines, either in general or with particular respect to pay telephones. Without any explication of what is or is not a multiline business line, most LECs have taken it upon themselves

---

[8] Access Charge Reform Order, *supra*, 12 FCC Rcd at 16020 (emphasis added).

[9] See, *e.g.*, Billed Party Preference for InterLATA 0+ Calls *(Second Report and Order on Reconsideration)*, FCC 98-9, released January 29, 1998.

-- for apparent, transparent, revenue enhancing reasons -- to categorize all payphone lines as multiline business lines for purposes of PICC charges. Oncor submits that a determination of when -- if ever -- a payphone line should be considered to be a multiline business line -- should be made in the first instance by the Commission, not by individual LECs.

Having said that, an analysis of how to categorize payphone lines for PICC purposes should begin with examining how those lines are being used. As commonly understood, business lines are telephone lines utilized by commercial enterprises in the conduct of their businesses, and residential lines are lines which enable consumers to have telephone service for their personal use at their homes. Pursuant to the Commission's PICC charge rule, those business lines which are the only telephone line used by a business are assessed the single line business line PICC charge which is the same ($0.53 per month) as the primary residential line rate. Where a business utilizes more than one telephone line in the conduct of its commercial enterprise, it is assessed the far higher multliline business line PICC rate of $2.75 per line per month.

Applying this analysis, whether a payphone line should be assessed a multiline PICC charge should depend on whether that line is one of multiple lines used by a business in the conduct of its commercial enterprise. Under that test, payphones should rarely -- if ever -- warrant subjection to PICC charges at the multiline business line rate. In a situation where there are multiple payphones at the same location (*e.g.*, at an airport or a shopping mall), are those payphones being used by the location owner in the conduct of its business? If they are not being used by the airport authority to operate the business of the airport, they are not being used as business lines and should not be subject to PICC charges as if they were. Similarly, if the owner of a shopping mall is not using the payphones at the mall to conduct the business of the shopping mall, then they too would not seem to be multiline business lines.

Therefore, Oncor believes that the distinction between single line business lines and multiline business lines is not relevant for payphones. In the event that the Commission concludes that payphones do constitute business lines, then, at the very least, the Commission should recognize that many pay telephones -- LEC-provided as well as privately-owned payphones -- are found at locations where they are the only payphone -- often the only telephone. For example, as Oncor's April 22 letter describes, Oncor provides service from payphones located at service stations, restaurants, taverns, campgrounds, and other small businesses with few or no other telecommunications facilities. To treat payphones at such locations as multiline business phones is plainly inconsistent with the common understanding of multiline business lines, and would cause undue economic harm to those IXCs who provide service from payphones at such locations.

5. **Do policy reasons, practical considerations, or other factors suggest that price cap LECs should be permitted to assess PICCs on the LEC's public payphone lines that are different in amount, or collected from a different party, from those assessed on privately-owned payphones?**

Oncor has no position on this issue.

6. **To what degree could imposition of PICC charges on any of the parties listed in Question (3), above, cause reductions in the availability of public payphone services, increases in rates, or reduction in competition for interstate, interLATA traffic originating from public payphones?**

Whether or not imposition of PICC charges on payphones will reduce the availability of public payphone services is a question more appropriately addressed by operators of payphones -- LECs and private payphone owners. However, if the PICC charges are imputed to the phone owner, it will render it more costly to maintain the payphone and possibly reduce the availability of payphones. Similarly, IXCs will be less inclined to compete to be the presubscribed IXC at payphone locations if that selection subjects them to additional charges relative to the additional revenue to be realized. Of paramount importance, however, imposition of PICC charges on presubscribed 0+ IXCs will increase those carriers' costs of rendering service, and will inevitably cause them to pass through those additional costs to consumers, either in higher rates or in PICC surcharges, in the same manner as presubscribed IXCs are doing in the business and residential market segments today. Any Commission rule or policy which results in cost increases and ultimately price increases to consumers in using away-from-home or office telecommunications services should be avoided.

In considering the impact of PICC charges on availability of telecommunications services from payphones, the Commission should remain mindful of the fact that under the PIC selection system as it exists today, IXCs who are chosen as the 0+ presubscribed carriers by payphone premise owners have no ability to remove themselves as the 0+ PIC once selected. It is widely-recognized that the frequency of 0+ calls from payphones has declined significantly in recent years. This decline primarily attributable to three circumstances: 1) growth in the use of prepaid calling cards; 2) dial-around calling through use of access code dialing; and 3) increased usage of wireless services, including cellular and PCS in lieu of payphone calling. To impose additional non-usage, non-revenue-based PICC charges on presubscribed IXCs will discourage any IXCs from wanting to provide 0+ service at payphones. The result could be a high incidence of payphones without 0+ interexchange service available or, even worse, declining availability of payphones as payphone owners and location providers elect not to incur the investment in payphones that no longer produce usage-based revenue.

Finally, Oncor notes that in the Access Charge Reform Order, the Commission described the PICC charge as a flat-rated charge that "recovers local loop costs in a cost causative manner."[10] Cost causation long has been a primary policy goal underlying the Commission's access charge rules. Imposition of PICC charges on 0+ presubscribed IXCs serving payphones would stand the principle

---

[10] Access Charge Reform Order, *supra* 12 FCC Rcd at 16025

of cost causation on its head. When a LEC provides an access line to connect a payphone with the public switched network, who is it that causes the LEC to incur the costs of that line? Certainly not the presubscribed 0+ IXC. It never sought the line, nor did it connect the payphone to the line. In the case of the payphone installed by the choice of the payphone provider, whether a LEC or a private provider, the cost causer is the payphone provider who chose to place a payphone at a specific location, and who derives economic benefit from placement of the payphone at that location. In the case of a payphone installed by a payphone provider at the request of a location provider/premise owner (*e.g.*, a so-called "semi-public" payphone), the cost causer would be the entity seeking payphone service. If the Commission is to adhere to its oft-articulated concerns about imposition of costs on cost causers, those persons requesting that payphones be located on their premises would be the most appropriate entities upon who to assess the charges now being recovered by PICC charges on the presubscribed 0+ IXCs serving payphones.

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.
d/b/a ONCOR COMMUNICATIONS, INC.

Mitchell F. Brecher

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, NW
Washington, DC 20036
(202) 939-7900

Its Attorneys

May 26, 1998

79438.1/0816

CERTIFICATE OF SERVICE

I, Antoinette M. Thorne hereby certify that on this 26th day of May, 1998 a copy of the foregoing *Comments of Oncor Communications, Inc.* was served to each of the parties listed below:

VIA HAND DELIVERY:

James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

International Transcription Service
1231 20th Street, NW
Washington, DC 20554

VIA REGULAR MAIL:

Mr. William M. Waldron
Boston Telecommunications Company
1 Chace Road, #14
Crossroad Commons Plaza
East Freetown, MA 02717

Mr. Larry Kay
National Operator Services, Inc.
One Democracy Plaza, Suite 204
Democracy Blvd.
Bethesda, MD 20817

Mr. John H. Goida
TeleConcepts Inc.
P.O. Box 2324
Princeton, NJ 08543

Antoinette M. Thorne
Antoinette M. Thorne